BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of:

LORETTA M. THOME
(Claimant-Respondent)

PRECEDENT
BENEFIT DECISION
NO. P-B-25
Case No. 68-1460

S.S.A. No.

PACIFIC TELEPHONE
(Employer-Appellant)

Employer Account No.

The employer appealed from Referee's Decision No. BK-11556 which held that the claimant was not disqualified for benefits under section 1256 of the Unemployment Insurance Code and that the employer's account is not relieved of charges under section 1032 of the code. Written argument has been submitted to this board by the employer and the claimant. Although given the opportunity, such argument was not submitted by the Department of Employment.

STATEMENT OF FACTS

The claimant was employed by the above employer from 8:30 a.m. to 5 p.m., 40 hours a week, for approximately one and one-half years as a telephone operator at a salary of $84.50 a week. The employment relationship ended effective December 28, 1967 under the following circumstances.

The claimant resided in Tujunga, California with her brother, and she was working in the employer's North Hollywood, California, facility. She had an unsatisfactory attendance record and had frequently been late in arriving at work or absent from work because of transportation difficulties. She had been warned about

her attendance on two occasions. On November 24, 1967 the claimant's supervisor told the claimant that unless her attendance improved she (the supervisor) would have to recommend that the claimant be dismissed. The claimant relied principally upon her brother for transportation for work. She also, on occasion, received rides to and from work from other persons, one of whom worked in the employer's toll office at the North Hollywood facility.

In August 1967 the claimant purchased a ten-year-old car to use as transportation for work. The car was in faulty condition so that she was only able to use it two or three times for work. The car was in a repair shop the rest of the time and it was still there on the date of the hearing before the referee.

Some time previous to the termination of the employment relationship, the claimant made inquiry of the employer regarding the possibility of a transfer to another of the employer's facilities or a leave of absence, in order to solve her transportation problem. She was told that these requests could not be granted because of the claimant's unsatisfactory attendance record.

The claimant also placed a note on the employer's bulletin board and made inquiry of her fellow employees in an attempt to solve her transportation problem. She did not place an ad in the employer's magazine for transportation because she thought it would be useless since it was her belief that no one who worked at the facility lived in Tujunga.

Public transportation between the claimant's place of residence and her place of work would have required the claimant to walk between one-half mile and a mile, and ride three buses costing $1.07. The time involved would have been about one and one-half hours each way.

The claimant occasionally used a taxi for transportation for work. This cost $6 each way.

The claimant's brother got married on or about December 2, 1967. When he moved out of the premises where he and the claimant had been living, this left the claimant without her principal means of transportation for work.

The claimant was absent from work with permission of the employer for a number of days near the end of November 1967 and the first part of December 1967, because of lack of transportation.

The claimant worked last on December 25, 1967. Her next day of work was December 27, 1967. The claimant called in and told her supervisor that she had no way to get to work but that she would try to come in to work. She did not make it to work that day.

At about 8:45 a.m. on December 28, 1967 the claimant's supervisor called the claimant and asked what her plans were about coming to work. The claimant said that she still had no way to get to work; that she could not afford a taxi; and that "probably this was it" regarding her continued employment. Either during this conversation or in another telephone conversation on December 29, 1967, the claimant's supervisor told the claimant that the supervisor was recommending that the claimant be terminated as of December 28, 1967. The employment relationship did end on that date.

The claimant did not request a transfer or a leave of absence to solve her transportation problem during the last mentioned telephone conversations. The claimant did not do so because of the employer's prior refusal of such requests. In a telephone interview with a representative of the Department of Employment, a representative of the employer did not remember telling the claimant that she could not have a transfer or a leave of absence, and stated that the claimant could have had a leave of up to 30 days to solve her transportation problem. The department representative reported the claimant as saying that had she known that she could receive a 30-day leave of absence to solve her transportation problem she could have had her car available in that period of time.

The employer's representative testified that the employment relationship could have been preserved had the claimant requested to work so-called "excused time" on December 27 and 28, 1967. Although the claimant had used this kind of work time on a number of occasions, and she had used it as recently as December 20, 1967, she testified that she did not request it on those dates "Except that it might not be given; I don't really know."

The claimant testified that she could not ride with her friend who worked in the toll office on December 27 or December 28, 1967 because her friend worked different hours from what the claimant was working.

REASONS FOR DECISION

Section 1256 of the code provides that an individual is disqualified for benefits, and sections 1030 and 1032 of the code provide that the employer's reserve account may be relieved of benefit charges if the claimant left his most recent work voluntarily without good cause or if he has been discharged for misconduct connected with his most recent work.

In determining whether there has been a voluntary leaving of work or a discharge under section 1256 of the code, a discharge occurs where the employer is the moving party in terminating the employment, and a voluntary leaving of work occurs where the employee is the moving party in terminating the employment (Benefit Decision No. 6590).

The party that set in motion the cause of the termination of the employment relationship herein was the claimant since she lost her means of transportation for work. We therefore have a voluntary leaving of work situation and the question becomes whether such leaving was with or without good cause.

In Clark v. Bogus Basin Recreational Association (Idaho, 1967) 435 P.2d 290, the claimant worked as a ski lift operator for approximately two and one-half winter seasons. For two seasons he worked a double shift and

earned $26 a day. In his last season, the claimant worked from October 26, 1966 to December 17, 1966 and earned only $14 a day as he was given the day shift only. On December 17, 1966 the claimant told his foreman that he was quitting because he was not making enough money.

During the claimant's first season he went to work by driving a company truck which had a camper van behind it. When he had to ride in the camper it made him ill because he was subject to motion sickness.

During the second season, the claimant drove his own car to work to avoid becoming ill. The claimant was able to afford to drive his own car only because he worked a double shift.

During the claimant's last season, which began on October 26, 1966, the claimant had to be driven to work in the company truck because his car was laid up for repairs and he could not afford to pay $350 to have it fixed or to rent a car to go to work. As a result he would continually suffer from motion sickness.

The transportation furnished by the employer was merely a matter of convenience and was not guaranteed as part of the employment agreement.

The claimant gave as his reason for quitting that he became car sick continually while riding in the company truck and that he could not afford to drive another car because of only working one shift.

The Idaho unemployment insurance law contains the following provision:

> "The personal eligibility conditions of a benefit claimant are that --
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> * * *
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> "(f) His unemployment is not due to the fact that he left his employment voluntarily without good cause. . . ."

In holding that the claimant quit without good cause the court stated:

> " . . . appellant /claimant/ has failed to show good cause for voluntarily leaving his employment because the problem of transportation to and from work is the personal responsibility of the employee where there is no duty upon the employer to furnish such means. Mississippi Employment Security Commission v. Ballard, 252 Miss. 418, 174 So. 2d 307 (1965); Zupancic v. Unemployment Compensation Board of Review, 185 Pa. Super. 252, 142 A. 2d 395 (1958). See also Jacobs v. Office of Unemployment Compensation and Placement, 27 Wash. 2d 841, 179 P. 2d 707 (1947); Copeland v. Oklahoma Employment Security Commission, 197 Okl. 429, 172 P. 2d 420 (1946)."

In the Ballard case mentioned above, the claimant worked for about six years in a garment plant as a machine operator. She quit on January 3, 1964 because she had no transportation to and from work. The claimant lived about 30 miles from the plant. She had no transportation of her own so she had to arrange rides with others. Circumstances developed so that she could no longer make an arrangement for rides with others so she was compelled to leave her work. The court held that the claimant left her work voluntarily without good cause within the meaning of the Mississippi unemployment insurance law because the claimant's transportation to work was a personal problem to be solved by her; that one who is in the labor market and leaves suitable work because of lack of transportation does so without good cause.

In the Zupancic case mentioned above, the claimant left his work because the fellow worker with whom he was riding quit his employment, and the claimant had no means of transportation to and from work. The claimant lived 12 miles from the place of employment. He did not own an automobile and there was no public transportation available. He could only get to work by riding with someone and no one was available for this purpose. The question for decision was whether the claimant left his work with or without cause of necessitous and compelling

nature, within the meaning of the Pennsylvania unemployment insurance law.

The court reasoned that in order to escape the disqualification, the reason for leaving work must be real not imaginary, substantial not trifling, reasonable not whimsical; the cause of leaving work must meet the test of ordinary common sense and prudence. The court concluded:

> " . . . His /the claimant's/ cause for leaving does not meet the test of ordinary common sense and prudence. His transportation problem is certainly not the insurmountable difficulty contemplated under this Court's interpretation of what are necessitous and compelling reasons. His passive attitude in the face of his problem is not indicative of a genuine willingness to work and 'a sincere desire for work that will overcome surmountable obstacles which workers elsewhere encounter.' . . ."

In Szojka v. Unemployment Compensation Board of Review (1956), 187 Pa. Super. 643, 146 A. 2d 61, the claimant was last employed as a punch press operator in Philadelphia, Pennsylvania. He had been absent due to injury and upon his return to work he was told that in a week the plant was moving to Oaks, Pennsylvania, which is about 32 miles from Philadelphia. The claimant knew of this change in plant location for several months. The claimant did not continue the employment relationship because of purported transportation difficulties.

The plant at Oaks was accessible to the claimant by public transportation which required less than two hours of travel time. Other employees (more than 100) formed car pools. At least three of these employees were in the area of the claimant's home. The claimant did not wish to use these means of transportation because he did not wish to work so far from home.

The court held that the claimant left his work without cause of a necessitous and compelling nature. The court concluded:

" . . . His /the claimant's/ transportation problem is certainly not the insurmountable difficulty contemplated under the court's interpretation of what are necessitous and compelling reasons for voluntarily leaving his employment and his failure to arrange for transportation indicated a lack of reasonable effort to maintain his employment. . . .

"The fact that this appellant left employment where he was earning $2 per hour to become unemployed is certainly not indicative of a genuine willingness to work and 'a sincere desire for work that will overcome the surmountable obstacles which workers elsewhere encounter.' . . ."

In Faulkiner v. Unemployment Compensation Board of Review (1953) 200 Pa. Super. 398, 188 A. 2d 803, the claimant was employed in Muncy, Pennsylvania. Upon returning to work after being ill, the claimant was informed that the employer's operations had been transferred to Williamsport, Pennsylvania. The claimant and her husband lived about 32 miles from Muncy. Her husband worked in Muncy. They owned an automobile and, along with two other people who owned automobiles, they took turns driving their own automobiles and transporting the others as passengers to and from work. The claimant's husband stopped work at 4 p.m. and was ready to leave for home shortly thereafter. The claimant would not be able to get to Muncy from Williamsport until between 4:30 p.m. and 5 p.m. The claimant quit her job because of the inconvenience of transportation. The court held:

"It is evident that she /the claimant/ voluntarily quit her employment because of transportation inconvenience. It is clear, also, from undisputed evidence that these transportation inconveniences were not serious enough to constitute good cause for quitting her employment. . . .

"The claimant and her husband could have easily worked out her transportation problem had she desired to continue her employment. Her conduct was not consistent with one who desires to continue employment. A claimant at all times, must be ready, able and willing to accept suitable employment. . . ."

The holdings in the above court decisions can be reasonably cited for the following propositions which are not necessarily completely distinct:

1. Loss of an individual's usual means of transportation does not in itself require a finding of good cause for leaving work.

2. In order for a leaving of work because of transportation difficulties to be for good cause, the transportation difficulties must be of a substantial nature not surmountable by ordinary common sense and prudence.

We agree with these propositions, and we agree with the conclusions reached by the courts, above, for the factual situations presented in the particular cases.

Addressing ourselves to the particular case at hand, the factual situation presented falls within both of the above propositions. The claimant lost her usual means of transportation, but her transportation difficulties were not insurmountable.

As we view the facts herein, the claimant had at least the following ordinary common sense solutions to her problem of a lack of transportation:

1. She could have exerted more effort to have her car fixed. She indicated that if she had a 30-day leave of absence she could have had the car repaired and in running order.

2. She could have obtained another car.

3. She could have used public transportation at least until she otherwise solved her transportation problem.

4. She could have moved her residence to a location which would have eliminated her problem of a lack of transportation.

In mentioning these solutions we point in particular to the Clark, Ballard, and Zurancic cases, above, wherein the courts of three different states have held that problems of transportation for work are the personal problem of the employee where such transportation is not an obligation of the employer under the contract of hire. In so concluding, the courts are holding, in effect, that where the employee has not acted prudently and with common sense, undesirable consequences which result from a job termination because of transportation problems should flow more naturally to the party (the employee) that caused such a termination. Thus, in the absence of special circumstances, the employee should be disqualified for benefits.

In suggesting that the claimant use public transportation which would have taken one and one-half hours each way, we are not unmindful of our decisions which appear to establish a standard of one hour travel time in determining whether there is or is not good cause for leaving work (see Benefit Decisions Nos. 5008, 5290, and 6173). We believe that these decisions have been somewhat misconstrued, since in each case we considered factors in addition to travel time in reaching our conclusions. For example, in each of the cited cases there was a permanent transportation problem for which no solution could be devised in the foreseeable future. It remains our conclusion that no single standard of travel time may be properly applied to all situations.

Travel time should not be considered in a vacuum but in context with all other factors such as distance, cost of commuting, the wages paid for the work, the nature and permanence of the job, the nature and permanence of any travel difficulties, and numerous others.

The man who walked to work or rode a horse car has been replaced by the automobile driver on the freeway. Persons who live great distances from their work do so usually from personal preference. Small town neighborhoods have become lost in a spreading and exploding population. Small town industry is no longer the mainstay of our economy. Individuals who choose to avail themselves of the advantages of suburban metropolitan living must nevertheless accept the obligation

to provide themselves with adequate transportation to centers of employment. This the claimant herein failed to do.

On the other hand, moving one's place of residence in this day and age of mobility of persons and availability of living quarters is certainly a common sense solution for the prevention of unemployment. Circumstances could exist, of course, which might forestall the requirement or possibility of such a move. Family obligations could be such an instance. However, there is no evidence before us which would have precluded such a move on the part of the claimant herein.

Since the claimant herein did not act in an ordinary common sense manner to solve her problem of a lack of transportation for work, she left her work without good cause under section 1256 of the code.

DECISION

The decision of the referee is reversed. The claimant voluntarily left her work without good cause within the meaning of section 1256 of the code. The employer's reserve account is relieved of benefit charges under section 1032 of the code.

Sacramento, California, September 24, 1968.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

ROBERT W. SIGG, Chairman

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